

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
CENTRAL DIVISION

JAMES P. RUTLEDGE, Movant, vs. UNITED STATES OF AMERICA, Respondent.	3:23-CV-03018-RAL ORDER GRANTING MOVANT'S MOTION TO PROCEED IN FORMA PAUPERIS ON APPEAL
--	--

Movant, James P. Rutledge, filed a Motion to Vacate, Set Aside, or Correct Sentence under 28 U.S.C. § 2255. Doc. 1. This Court granted the Government's motion to dismiss and denied Rutledge's § 2255 motion. Doc. 26. The Court also ordered that no certificate of appealability will issue. Id. at 26. Rutledge has filed a notice of appeal to the United States Court of Appeals for the Eighth Circuit from this Court's Opinion and Order Granting the Government's Motion to Dismiss, Doc. 26, and Judgment of Dismissal, Doc. 27. See Doc. 28. Rutledge moves for leave to proceed in forma pauperis on appeal. Doc. 29.

The Eighth Circuit historically has looked to district courts to rule on in forma pauperis motions on appeal and has held that filing-fee provisions of the PLRA do not apply to habeas corpus actions. Malave v. Hedrick, 271 F.3d 1139, 1140 (8th Cir. 2001) (per curiam). Federal Rule of Appellate Procedure 24(a)(3) provides that "[a] party . . . who was determined to be financially unable to obtain an adequate defense in a criminal case, may proceed on appeal without further authorization" unless the district court certifies that the appeal is not taken in good faith or finds that the party is not otherwise entitled to proceed in forma pauperis. In the underlying criminal proceeding, Rutledge was represented by the federal public defender's

office. Doc. 14 ¶¶ 3, 5. Although this Court ordered that no certificate of appealability will issue, the “good faith” standard applied to IFP applications is less stringent than the “substantial showing of the denial of a constitutional right” standard applicable to certificate of appealability requests. See Crawford v. State of Minn., 2005 WL 1843329, at *1 (D. Minn. Aug. 2, 2005). The appeal appears to be taken in good faith, and there does not appear to be any reason that Rutledge is not entitled to proceed in forma pauperis on appeal. See Doc. 30.

Therefore, it is hereby

ORDERED that Rutledge’s motion to proceed in forma pauperis on appeal, Doc. 29, is granted.

DATED May 29th, 2024.

BY THE COURT:



ROBERTO A. LANGE
CHIEF JUDGE